EXHIBIT 2
DATE 3-6-09
HB 634

House Bill 634 gives dignity to mentally ill in Montana

By MICHAEL BARBER - IR letter to the editor - 03/04/2009

This Friday, March 6, in the Montana Legislature, the House Human Services Committee will hear testimony on House Bill 634, a bill to create a state-operated system to transport to and from the hospital, patients with mental illness subject to court-ordered, involuntary treatment.

Passage of this bill would mean that, for the first time in Montana history, noncriminal and nonviolent persons needing court-ordered mental health care will be afforded transportation without being routinely restrained or shackled.

Talking about human rights issues without lapsing into sensationalism can sometimes be difficult. So, for the purpose of setting the stage, I'd like to begin with a thought experiment. Imagine that you have a brother, sister, cousin, parent or friend who has a mental illness. Now imagine, that, due to some difficulty—whether it be medication, circumstances, or otherwise — they require civil commitment to the State Hospital.

Stigmatizing, right? Now imagine they are put in shackles: handcuffs, leg irons, and body chains. For the sake of our discourse, I am going to stop there.

There is no reason for overwrought emotions in this, rather just an understanding of the above. That is, noncriminal, nonviolent persons with mental illness are regularly placed in full body shackles during their initial transport to the state hospital, as well as during their transport to and from courthouses for their hearings. Transportation occurs this way because the responsibility falls, by default, to the county sheriff's office.

This is not an attempt to change the responsibilities or practices of law enforcement officers; rather, the bill proposes to place the transportation and care of persons with mental illness into the hands of mental health professionals.

Over the past few months, I have had the distinct pleasure of working with Rep. Dave McAlpin, D-Missoula, who is carrying the bill. However, we must recognize that Sen. Jim Shockley, R-Victor, proposed the original draft. The case for human rights and dignity brings and should bring us together with the common understanding that we, as a state, can do so much better than this.

There is no reason to continue the shackling of noncriminal persons with mental illness. Support House Bill 634. Ask your local government officials and sheriffs to support the bill. Help create the environment of compassion necessary to treat those who find themselves in this position.

Michael Barber is the manager of the Transport with Dignity program as well as a student at the University of Montana.

Transportation with Dignity

A project to eliminate the routine restraint of non-violent & non-criminal patients

Creating new protocols to transport patients with mental illness in Montana, September 14, 2007 3/6/09 John Hovey APRN.

DR. PHILIPPE PINEL AT THE SALPÊTRIÈRE, 1795

The great pioneer of humanitarian reform orders the chains removed from patients at the Paris asylum for insane women.

In Montana, when persons suffering from mental illness become involved in civil mental health proceedings, they are routinely transported in hand cuffs, leg irons, and belly chain to and from court hearings and between health care facilities. This includes elderly, frail, non-violent, and non-criminal persons. The number of patients who undergo this humiliating experience is increasing every year in the state.

This unnecessary and dehumanizing practice places patients at risk for physical injury and psychological trauma. In addition to being placed in shackles, some patients, requiring transportation to health care facilities, are forced to travel in the same vehicle with convicted felons being taken to prison. Patients are kept in shackles throughout the civil court hearings, though they have not committed any offense nor have they exhibited any violence.

It is time to establish new protocols across the state that will eliminate the practice of shackling patients.

It is time to provide modes of transportation that are safe, dignified and cost effective. It is time to improve access to more humane court venues for patients and their families. It is time to create services that reduce the incidence of involuntary commitments. Mental health services consumers, families, advocates, and providers strongly urge the counties across the state to change the way persons with mental illness are treated.

Problem

Centuries have passed since Dr. Phillipe Pinel of Paris, France ordered the release of patients from chains in 1795. Yet, in Montana, in 2007, the practice of placing persons, suffering from debilitating mental illness, in handcuffs, leg irons, and belly chains still exist. According to the annual statistics on involuntary civil mental health commitments filed by the state's 22 district courts with the Montana Supreme Court, the number of persons who risk undergoing this degrading and harmful experience appears to be increasing, (Table 1.).

During the unfortunate but necessary occasion of having to hospitalize someone against their will, Montana law protects the patient's rights through the civil court process. Montana law designates the county of residence as the responsible party to provide transportation to court appearances and, if ordered by the court, to the state hospital. It is common then for counties to call upon law enforcement for transport. Law enforcement must adhere to rigorous policies designed for the safe transport and protection of both passenger and personnel. The result is that patients, regardless of their mental or physical condition, end up in shackles.

We recognize that, in the state of Montana, the numbers of sanity cases (involuntary civil mental commitment petitions) have been increasing. In 2004, there were 1,140 mental health case filings and in 2005, there were 1,232 filings, an increase of 8 %. From 2004 to 2005, the number of dispositions reported by district courts increased 11 %, (Montana Supreme Court, 2006). With the increase in the number of sanity cases, there will be an increase in the number of patients who will require transport to courts and health care facilities, and who, because of county transportation policies, will be put in physical restraints.

Involuntary Civil Mental Health Petitions	Filings	Dispositions
Montana 2004	1,140	1,008
Montana 2005	1,232	1,122
Percentage of Increase	8%	11%

Table 1: Increase in Civil Mental Health Filings and Petitions 2004-2005. (Montana Supreme Court, 2006)

It is important to note that the increased rate of persons undergoing civil mental health commitments surpasses the increased rate in population. Since the 2000 census, the population of Montana has grown by 3.5%. One district court has seen a

16% increase in the average number of involuntary civil mental health commitment cases over that same period. The age ranges of persons undergoing involuntary civil commitments is widening as well. In a sampling of one court district, the ages of persons undergoing civil mental health commitments range from 18 – 85 years of age. Men and women happen to be equally represented in that group.

In Montana, patients suffering from mental illness are routinely transported in shackles to and from court hearings and between health care facilities. These trips are often scheduled and are not emergency transports. The patients are often receiving medical as well as psychiatric care and are debilitated, and subdued. This unnecessary and dehumanizing practice places patients at risk for additional physical and psychological trauma. In addition, it is common practice for counties, charged with the transportation of these individuals, to transport them in the same vehicle with convicted felons being taken to prison.

Health care facilities, particularly mental health facilities in Montana and across the country have drastically reduced the use of seclusion and restraint with staff training and revised policies and practices. In 2007, the Centers for Medicare and Medicaid (CMS) announced more stringent criteria for the use of seclusion and restraints in health care settings. It is time to introduce the same level of safety and concern for the welfare and dignity of patients into the civil commitment process and transportation systems.

Problems with the use of physical restraints

1. More and more, involuntary emergency and commitment laws are relied upon to coerce debilitated older patients into treatment. These individuals may be confused, understandably frightened, resistive to help, and thus, refuse health care. The number of elderly in the category is increasing. These folks have lived their lives as model citizens, paid taxes and contributed to their communities. Despite their advanced age and physical infirmity, they may end up placed in handcuffs, leg irons and belly chains, taken to public court hearings alongside criminals in order to receive medical care.

2. Mechanical restraints for routine transportation of patients are used without medical authorization
3. The use of restraints in routine transport of patients goes against the Montana State Constitution's guarantee to preserve human dignity.
4. The practice of shackling patients places them at risk for nerve, muscle, tissue, and skeletal injuries.
5. The shackling of patients re-traumatizes persons who have suffered physical and sexual abuse.
6. Application of mechanical restraints negatively affects everyone involved, the patient, family, health care workers, and the transporting officials.
7. Using mechanical restraints and seclusion of patients on a routine basis may violate Montana law that specifically prohibits the use of restraints for "convenience".

8. Montana is gaining notoriety as a state that shackles persons who have mental illness. The 2006 National Alliance on Mental Illness (NAMI) State Report Card on Mental Health Services for Montana notes that, "Consumers report long hauls in shackles in the back of police cars taking them to the distant state hospital".
9. The use of mechanical restraints on a routine basis goes against standards set for patient protection by the Joint Commission on Accreditation of Health Care Organization (JCAHO) and the Centers for Medicare and Medicaid (CMS).
10. Relying on law enforcement for the routine transport of mental health patients places an unnecessary responsibility on officers, and takes them away from their primary duties.
11. The members of the National Association of State Mental Health Program Directors (NASMHPD) believe that seclusion and restraint are safety interventions of last resort and are not treatment interventions. The use of seclusion and restraint creates significant risks for people with psychiatric disabilities. These risks include serious injury or death, re- traumatization of people who have a history of trauma, and loss of dignity and other psychological harm. In light of these potential serious consequences, seclusion and restraint should be used only when there exists an imminent risk of danger to the individual or others and no other safe and effective intervention is possible. .

What can be done?

This is a multi-faceted problem, it will take a multi-faceted approach to resolve. No one entity is responsible for the current situation; its roots stretch across the entire system. No one stakeholder will be able to single handedly resolve the problem; it will take a collaborative approach. The ultimate objectives are patient safety, protection of patient rights, and the safety of transportation personnel. With the right approach and the right spirit, cost effective solutions can be found to resolve this issue.

1. Initiate a statewide task force to study the problem and implement solutions to the current problem. The task force will include, but not be limited to:
    a. Mental health consumers
    b. Mental health advocates
    c. Rural and urban judicial and tribal court districts
    d. State Public Defenders Office
    e. Mental health centers, providers, and hospitals
    f. State and county associations
    g. State law enforcement associations
    h. State departments that oversee, public health, mental health, and transportation
    i. State and local NAMI chapters
    j. State and local Mental Health Association chapters
2. Create a statewide policy that adheres to current mental health law that prohibits this unnecessary use of seclusion and restraint. Doing so will provide a common starting point for counties, judicial court districts to begin to work to resolve the problem.

3. Change the practice of relying on law enforcement to transport non-dangerous and non-criminal mental health patients. Contract with trained transportation providers to transport patients to where they need to be in safety and comfort, and with dignity.
4. End the practice of transporting patients in the same vehicle as prisoners.
5. End the practice of detaining patients in holding cells and having them appear in court in restraints.
6. In the event that restraints are necessary in transportation for the protection of life and prevention of injury, then replace metal handcuffs, leg irons, and belly chains with non-injurious, fully padded protective equipment.
7. Document the necessity of seclusion and restraint.
8. Document the assessment of the patient's circulation, movement, and sensation of the extremities prior to, during, and following the release from mechanical restraints is strongly encouraged.
9. Encourage each judicial district to submit an annual report to a designated oversight body that will include the number, sex, and ages of persons under their custody transported to non-emergency civil appearances in mechanical restraints.
10. Use certified medical or non-medical transportation and trained personnel to transport persons with non-emergent mental illness, much the same as is used for non-emergent cardiac, neurological and other medical conditions.
11. Utilize alternative methods of transportation for routine transportation of non-dangerous persons. Allow family members or advocates to travel with the patient.
12. Offer alternative sites for civil mental health hearing that afford consumers more dignified and less public court venues.
13. Use video technology, especially in outlying areas, to conduct civil mental health hearings between counties and health care facilities.
14. Schedule routine hearing dates at health care facilities to accommodate patients who require hearings but may be still too ill to travel.
15. Adopt JCAHO and CMS guidelines to use mechanical restraint only for life saving events. In the event that mechanical restraints are necessary to protect the patient during transport between healthcare facilities, then utilize fully padded non-injurious equipment.
16. Provide more accessible, community based mental health treatment services. This action will help to reduce the number of necessary civil commitments and reduce the need for hospitalization.

The policy of using restraints to transport passengers such as prisoners, violent, dangerous, or out of control persons is understandable and we do not wish to see peace officers endangered in any way by relaxing procedures. This is not the intent of the project. The point here is that currently, counties have, or can create options that are safer and more cost effective than defaulting to law enforcement for the safe transportation of non-violent and non-criminal health care consumers.

Changing current transportation practices for persons with mental illnesses will not incumber the work of peace officers nor will changes necessarily incur additional expense for counties. The objectives of this campaign are to: help take law enforcement out of medical transportation, and motivate counties to find or create more cost effective transportation options, and provide humane treatment to persons suffering with mental illness.

Respectfully submitted,

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